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UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

JENS ERIK SORENSEN, as Trustee of SORENSEN RESEARCH AND DEVELOPMENT TRUST, Plaintiff v. RYOBI TECHNOLOGIES, INC., a Delaware corporation; TECHTRONIC INDUSTRIES NORTH AMERICA, INC., a Delaware corporation; and DOES 1 – 100, Defendants.	Case No. 08cv00070 **FIRST AMENDED[1] COMPLAINT FOR PATENT INFRINGEMENT** REQUEST FOR JURY TRIAL

[1] Amended to add new accused products in paragraph 20.

Plaintiff JENS E. SORENSEN, as TRUSTEE OF THE SORENSEN RESEARCH AND DEVELOPMENT TRUST ("SRDT"), pursuant to the leave granted by the Court (Docket #30), files its First Amended Complaint for Patent Infringement against Defendants, alleges as follows:

THE PARTIES

1. SRDT is a California resident, and the trustee of a trust organized according to California law, and owner of all rights to United States Patent No. 4,935,184 (hereinafter "'184 patent"). A true and correct copy of the '184 patent is attached hereto as Exhibit A.

2. Defendant Ryobi Technologies, Inc. ("RYOBI") is a corporation organized under the laws of Delaware, having a principal office located at 1428 Pearman Dairy Road, Anderson, South Carolina 29625.

3. Defendant Techtronic Industries North America, Inc. ("TTINA") is a corporation organized under the laws of Delaware, having a principal office located at 1428 Pearman Dairy Road, Anderson, South Carolina 29625.

4. Upon information and belief, DOES 1-100 are entities, legal form unknown, that are involved in the actions giving rise to this Complaint.

5. Upon information and belief, one or more Defendants have acted as agents of one or more of each other during some or all of the times relative to the subject matter of this Complaint.

6. Upon information and belief, the Defendants have in the past and/or presently design, control manufacture, import, sell, and/or offer for sale within the United States, including this District, power tools with plastic housings, including products identified herein as accused products.

JURISDICTION and VENUE

7. This action arises under the Patent Laws of the United States of

America, Title 35, United States Code. Jurisdiction is founded on Title 28, United States Code §§ 1331, 1332(a), and 1338(a).

8. On information and belief, venue in this district is proper under 28 U.S.C. §§ 1391 and 1400(b) because Defendants have committed acts of infringement here and have extensive networks of dealers and online retailers which sell its products nationwide and in this District.

9. This Court has personal jurisdiction over Defendants under the long-arm statute of California and U.S. constitutional law because Defendants market and/or ships its products into this District, offer those products for sale and sells those products in this District, provide advertising in this District targeted to this district's residents, and maintain a network of authorized distribution arrangements with retailers in this district for the purpose of selling their products.

GENERAL ALLEGATIONS

10. The '184 patent entitled "Stabilized Injection Molding When Using a Common Mold Part With Separate Complimentary Mold Parts," was issued on June 19, 1990.

11. Upon information and belief, Defendants jointly, and with other entities not named as parties herein, engage in the design, manufacture, import, distribution, marketing, selling, and/or offering for sale of power tools under the Ryobi® trademarks.

12. Upon information and belief, Defendants jointly, and with other entities unknown, engage in the design, manufacture, import, distribution, marketing, selling, and/or offering for sale of power tools under the Craftsman® trademark.

13. Defendants have been on constructive notice of the '184 patent since its issuance on June 19, 1990.

14. Defendants have been on actual express notice of the '184 patented process at least as early as September 2004.

15. Upon information and belief, the Defendants have engaged in design, manufacture, import, sell, and/or offer for sale within the United States, including this District, power tools that have dual-layer external plastic housings.

16. On information and belief, all products identified herein and all as-yet-unidentified products manufactured through the same or substantially similar processes are manufactured utilizing processes which incorporate all elements of the ‘184 patented process.

17. None of the Defendants have obtained a license or any other authorization from the Plaintiff for manufacture, import, sale, and/or offer for sale in the United States of products manufactured through use of the ‘184 patented process.

CLAIM 1 - PATENT INFRINGEMENT AS TO RYOBI PRODUCTS

18. SRDT realleges and incorporates herein by reference paragraphs 1 through 17, inclusive, as though fully set forth herein.

19. On information and belief, Defendants have, within the past six years, designed, manufactured, imported into, sold and/or offered for sale within the United States and this District, products having dual-layer external plastic shells.

20. On information and belief, the products referred to in paragraph 19, above, include the following:

Ryobi 18.0V Circular Saw, Model No. R10631;
Ryobi 13 AMP Circular Saw, Model No. CSB131;
Ryobi 14.4V Drill, Model No. HP1441MK2F;
Ryobi 18.0V Drill/Driver, Model No. HP1802MK2F;
Ryobi 14.4V Drill/Driver, Model No. HP1442MK2F;
Ryobi Hammer Drill, Model No. HP1800MK2F;
Ryobi 18” Electric Chainsaw;
Ryobi One+ Lithium 18V Circular Saw, Model No. P104;

Ryobi One+ Lithium 18V Reciprocating Saw, Model No. P513;
Ryobi One+ Lithium 18V Drill/Driver, Model No. P203;
Ryobi One+ Lithium 18V Flashlight, Model No. P703;
JM82K Biscuit Joiner
P430 18V One+ Car Buffer
CSB141LZK 7-1/4” Dual Laser Circular Saw
P500 18V One+ Circular Saw with Laser
P211 18V One+ 2 Speed Hammer Drill
HP572K 7.2V Cordless Drill/Driver
HP596K 9.6V Cordless Drill/Driver
JS550LK Orbital Scrolling Jig Saw with Laser
P522 18V One + VS Orbital Jig Saw
ELL1001 Airgrip Compact laser level
EMTP006 Measure Tech Plus
HPL51K 3-1/4” Hand Planer Kit
P610 18V One+ Hand Planer
RJ162VK VS Reciprocating Saw
P510 18V One+ VS Reciprocating Saw
ESTP004 Studtech Pro
P301 18V One+ Stapler
RYO8548 Handheld Blower
P2100 18V One+ Blower

21. On information and belief, the products referred to in paragraph 19, above, may include other Ryobi-brand products sold under any other names or model numbers names which are manufactured utilizing similar processes, including but not limited to, any other product manufactured using the same injection mold as any of

the products identified above.

22. On information and belief, the products referred to in paragraphs 20 and 21 above (collectively referred to herein as “Accused Ryobi Products”) are manufactured through processes which incorporate all elements of the ‘184 patented process.

23. One or more of the Defendants received a notice of infringement from Plaintiff, detailing a substantial likelihood pursuant to 35 U.S.C. § 295 that certain Accused Ryobi Products were manufactured through a process which incorporates all elements of the ‘184 patented process and were asked to verify the actual manufacturing process.

24. To date, none of the Defendants have presented any admissible evidence of the actual manufacturing process for any Accused Ryobi Products to Plaintiff.

25. On information and belief, all manufacturing of the Accused Ryobi Products occurs in China.

26. On information and belief, the Defendants act together as a single enterprise for purposes of designing, manufacturing, marketing, importing, offering for sale, and/or selling the Accused Ryobi Products such that

27. On information and belief, Defendants continue to engage in infringement of the ‘184 patent, and in wanton and willful disregard of SRDT’s ‘184 patent rights.

28. On information and belief, Defendants continue to contribute to infringement of the ‘184 patent and induce others to infringe the ‘184 patent.

29. On information and belief, the conduct of Defendants in willfully continuing to infringe the ‘184 patent, and to contribute to infringement and induce others to infringe the ‘184 patent, despite being on both constructive notice and actual notice, is deliberate, thus making this an exceptional case within the meaning of 35 U.S.C. § 285.

30. On information and belief, SRDT has suffered and is continuing to suffer damages by reason of Defendants infringing conduct.

31. A reasonable royalty for infringement of the ‘184 patent constitutes at least eight percent (8%) of gross sales by each of the Defendants of the Accused Ryobi Products from six years prior to the filing of this Complaint and continuing until expiration of the ‘184 patent, according to proof and allocation at trial.

32. On information and belief, the reasonable royalty owed to SRDT from Defendants should be trebled on account of willful infringement by Defendants, according to proof and allocation at trial.

CLAIM 2 - PATENT INFRINGEMENT AS TO CRAFTSMAN PRODUCTS

33. SRDT realleges and incorporates herein by reference paragraphs 1 through 17, inclusive, as though fully set forth herein.

34. On information and belief, Defendants have, within the past six years, designed, manufactured, imported into, sold and/or offered for sale within the United States and this District, products having dual-layer external plastic shells.

35. On information and belief, the products referred to in paragraph 34, above, include the following:

Craftsman 9.6 Volt Cordless Drill	Sears Item No. 26922
Craftsman 12.0 Volt Cordless Drill	Sears Item No. 26926
Craftsman 14.4 Volt Cordless Drill Professional	Sears Item No. 26927
Craftsman 18.0 Volt Cordless Drill Professional	Sears Item No. 27124
Craftsman 18.0 Volt Cordless Hammer Drill	Sears Item No. 26928
Craftsman 24.0 Volt Cordless	Sears Item No. 26929

Hammer Drill	
Craftsman 19.2 Volt Cordless Drill Combo Kit	Sears Item No. 11431
Craftsman 7.2 Volt Cordless Drill	Sears Item No. 11450
Craftsman 9.6 Volt Cordless Drill/Driver Kit	Sears Item No. 11451
Craftsman 10.8 Volt Cordless Drill	Sears Item No. 11346
Craftsman 12.0 Volt Cordless Drill/Driver Kit	Sears Item No. 11452
Craftsman 13.2 Volt Cordless Drill/Driver Kit	Sears Item No. 11147
Craftsman 14.4 Volt Cordless Drill/Driver	Sears Item No. 11424
Craftsman 18.0 Volt Cordless Drill/Driver Kit	Sears Item No. 11454
Craftsman 14.4 Volt Cordless Right Angle Drill/Driver	Sears Item No. 10153
Craftsman 19.2 Volt Cordless Drill/Driver Combo Kit	Sears Item No. 11419
Craftsman 18.0 Volt Cordless with Trim Saw Combo Kit	Sears Item No. 11435
Craftsman 6.0 Amp Corded Hammer Drill	Sears Item No. 10136
Craftsman 15 Amp Circular Saw 7-1/4”	Sears Item No. 27108
Craftsman 19.2 Volt Cordless Trim Saw	Sears Item No. 11426

Craftsman 19.2 Volt Cordless Reciprocating Saw	Sears Item No. 11427
Craftsman 12 in. Mitre Saw Compound with Laser Track	Sears Item No. 21224
Craftsman 5 Amp Corded Drill Keyless	Sears Item No. 10105
Craftsman 5.5 Amp Corded Drill Variable Speed	Sears Item No. 10110
Craftsman 6.0 Amp Corded Drill Variable Speed	Sears Item No. 10111
Craftsman 6.0 Amp Corded Drill Variable Speed	Sears Item No. 10112

36. On information and belief, the products referred to in paragraph 34, above, include the following:

Craftsman 6.0 Amp Corded Drill Variable Speed Keyless	Sears Item No. 26946
Craftsman 19.2 Volt Cordless Trim Saw Kit	Sears Item No. 27119
Craftsman 18.0 Volt Cordless Reciprocating Saw	Sears Item No. 27129

37. On information and belief, the products referred to in paragraph 34, above, may include other Craftsman-brand products sold under any other names or model numbers names which are manufactured utilizing similar processes, including but not limited to, any other product manufactured using the same injection mold as any of the products identified above.

38. On information and belief, the products referred to in paragraphs 34 - 37

above (collectively referred to herein as “Accused Craftsman Products”) are manufactured through processes which incorporate all elements of the ‘184 patented process.

39. Upon information and belief, Defendants control the nature and quality of the Accused Craftsman Products and manufacture or have these products manufactured in accordance with their design and product specifications.

40. One or more of the Defendants received a notice of infringement from Plaintiff, detailing a substantial likelihood pursuant to 35 U.S.C. § 295 that certain Accused Craftsman Products were manufactured through a process which incorporates all elements of the ‘184 patented process and were asked to verify the actual manufacturing process.

41. To date, none of the Defendants have presented any admissible evidence of the actual manufacturing process for any Accused Craftsman Products to Plaintiff.

42. On information and belief, all manufacturing of the Accused Craftsman Products occurs in China.

43. On information and belief, the Defendants act together as a single enterprise for purposes of designing, manufacturing, marketing, importing, offering for sale, and/or selling the Accused Craftsman Products such that

44. On information and belief, Defendants continue to engage in infringement of the ‘184 patent, and in wanton and willful disregard of SRDT’s ‘184 patent rights.

45. On information and belief, Defendants continue to contribute to infringement of the ‘184 patent and induce others to infringe the ‘184 patent.

46. On information and belief, the conduct of Defendants in willfully continuing to infringe the ‘184 patent, and to contribute to infringement and induce others to infringe the ‘184 patent, despite being on both constructive notice and actual notice, is deliberate, thus making this an exceptional case within the meaning

of 35 U.S.C. § 285.

47. On information and belief, SRDT has suffered and is continuing to suffer damages by reason of Defendants infringing conduct.

48. A reasonable royalty for infringement of the ‘184 patent constitutes at least eight percent (8%) of gross sales by each of the Defendants of the Accused Craftsman Products from six years prior to the filing of this Complaint and continuing until expiration of the ‘184 patent, according to proof and allocation at trial.

49. On information and belief, the reasonable royalty owed to SRDT from Defendants should be trebled on account of willful infringement by Defendants, according to proof and allocation at trial.

PRAYER FOR RELIEF

WHEREFORE, SRDT prays that judgment be entered as follows:

a. For a determination that the Accused Processes are presumed to infringe the ‘184 patent pursuant to 35 U.S.C. § 295;

b. For a determination that the Defendants act together as a single enterprise for purposes of designing, manufacturing, marketing, importing, offering for sale, and/or selling the Accused Ridgid Products;

c. For a determination that the Defendants act together as a single enterprise for purposes of designing, manufacturing, marketing, importing, offering for sale, and/or selling the Accused Craftsman Products;

d. Defendants are adjudicated and decreed to have infringed the ‘184 patent;

e. Defendants are adjudicated and decreed to have contributed to the infringement of the ‘184 patent and to have induced others to infringe the ‘184 patent;

f. Defendants, their parents, subsidiaries, divisions, affiliates, officers, agents, and attorneys, and those acting in privity or concert with them, are enjoined from further infringement of the '184 patent, and from further contribution to or inducement of the infringement of the '184 patent;

g. Defendants are ordered to account for damages adequate to compensate Plaintiff for the infringement of '184 patent, their contributory infringement of the '184 patent, and their inducement of infringement of the '184 patent, in the amount of at least eight percent (8%) of gross sales as a reasonable royalty for all sales of Accused Products and according to proof at trial, and such damages are awarded to Plaintiff;

h. Such damages as are awarded are trebled by the Court pursuant to 35 U.S.C. § 284 by reason of the willful, wanton, and deliberate nature of the infringement;

i. That this case is decreed an "exceptional case" and SRDT is awarded reasonable attorneys' fees by the Court pursuant to 35 U.S.C. § 285;

j. For interest thereon at the legal rate;

k. For costs of suit herein incurred;

l. For such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

SRDT respectfully requests that its claims be tried to a jury.

DATED this Thursday, September 04, 2008.

JENS ERIK SORENSEN, as Trustee of
SORENSEN RESEARCH AND DEVELOPMENT
TRUST, Plaintiff

/s/ Melody A. Kramer

J. Michael Kaler, Esq.
Melody A. Kramer, Esq.

Attorneys for Plaintiff

PROOF OF SERVICE

I, Melody A. Kramer, declare: I am and was at the time of this service working within in the County of San Diego, California. I am over the age of 18 year and not a party to the within action. My business address is the Kramer Law Office, Inc., 9930 Mesa Rim Road, Suite 1600, San Diego, California, 92121.

On Thursday, September 04, 2008, I served the following documents:

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

PERSON(S) SERVED	PARTY(IES) SERVED	METHOD OF SERVICE
Roger G. Perkins Angela Kim Kristina M. Pfeifer MORRIS POLICH & PURDY LLP 501 West Broadway, Suite 500 San Diego, California 92101 rperkins@mpplaw.com akim@mpplaw.com kpfeifer@mpplaw.com	Ryobi Technologies, Inc.; Techtronic Industries North America, Inc. .	Email - Pleadings Filed with the Court via ECF
Robert S. Mallin Brinks Hofer Gilson & Lione NBC Tower 455 N City Front Plaza Drive Suite 3600 Chicago, IL 60611 rmallin@brinkshofer.com	Ryobi Technologies, Inc.; Techtronic Industries North America, Inc.	Email - Pleadings Filed with the Court via ECF

☐ (Personal Service) I caused to be personally served in a sealed envelope hand-delivered to the office of counsel during regular business hours.

☐ (Federal Express) I deposited or caused to be deposited today with Federal Express in a sealed envelope containing a true copy of the foregoing documents with fees fully prepaid addressed to the above noted addressee for overnight delivery.

☐ (Facsimile) I caused a true copy of the foregoing documents to be transmitted by facsimile machine to the above noted addressees. The facsimile transmissions were reported as complete and without error.

☒ (Email--Pleadings Filed with the Court) Pursuant to Local Rules, I electronically filed this document via the CM/ECF system for the United States District Court for the Southern District of California.

☐ (U.S. Mail) I mailed a true copy of the foregoing documents to a mail address represented to be the correct mail address for the above noted addressee.

I declare that the foregoing is true and correct, and that this declaration was executed on Thursday, September 04, 2008, in San Diego, California.

/s/ Melody A. Kramer

Melody A. Kramer